

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking to implement the provisions of
Public Utilities Code § 761.3 enacted by
Chapter 19 of the 2001-02 Second Extraordinary
Legislative Session.

Rulemaking 02-11-039
(Filed November 21, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
FOLLOWING WORKSHOP
(MAINTENANCE STANDARDS)**

A workshop was held on March 11, 2003, to allow further discussion of the methods for enforcing the maintenance standards adopted by the California Electricity Generation Facilities Standards Committee (Committee). The appearances at the workshop are set forth in the transcript of the proceeding. The Commission's Consumer Protection and Safety Division (CPSD) requested permission to file late comments and a reply and to appear as a party; and permission was granted. Parties were provided an opportunity to address specific questions raised by the presiding officer (set forth as Attachment A) and to make general comments about the enforcement of the maintenance standards.

In advance of the workshop, Mr. Edward Maddox of SeaWest WindPower, Inc., submitted email comments. These comments appear not to have been served on other parties; they are set forth as Attachment B.

After a discussion of the reliability standards adopted by the North American Electric Reliability Council and the Western Electricity Coordinating

Council, I requested a summary of how these standards apply to generating facilities and how violations of the standards are enforced and sanctioned. Pacific Gas and Electric Company, through its attorney Janet Loduca (Loduca), agreed to file and serve such a summary. The summary was filed and served on March 18, 2003.

Loduca also requested one or more additional workshops on (a) the potential difficulty of enforcing the maintenance standards in actual plant settings; and (b) the respective roles of the Commission, Federal Energy Regulatory Commission, and the California Independent Systems Operator (CAISO) in developing an enforcement strategy. The request was taken under advisement.

Upon further reflection, I do not believe a workshop on either subject would be useful at this time, especially given the abbreviated schedule for this phase of the rulemaking proceeding. The appropriateness and workability of the maintenance standards are properly in the domain of the Committee, informed over time by the experiences of the generators and the CPSD.

While I remain interested in the second topic, the March 11th hearing did provide a basic understanding of the Independent System Operator (ISO) tariff process and the CAISO use of its tariff to improve system reliability. I was impressed by the many uncertainties and lack of details accompanying the proposal of some parties to enforce the maintenance standards by incorporation in the ISO tariff. Rather than conduct another workshop, I will allow the parties to submit more specific proposals about how this “enforcement-by-incorporation” process might work. I am especially interested in proposals that (a) provide a meaningful enforcement role for the Commission and its CPSD staff; and (b) result in final enforcement decisions (other than for appeals) by the

Commission, the CAISO, or both. More information on this how this approach has been used elsewhere, either in the Midwest or another region, would also be appreciated.

IT IS RULED that:

1. The Commission's Consumer Protection and Safety Division (CPSD) has entered an appearance and will be listed as a party in this proceeding; and its attorneys, Cleveland Lee and Carol Dumond, will be added to the service list.
2. CPSD's late comments and reply shall be filed by the Docket Office.
3. On or before March 26, 2003, any party or group of parties may file and serve a more detailed proposal on how the maintenance standards could be enforced by incorporation into the California Independent System Operator tariff. Other parties may file replies to any such proposal on or before March 28, 2003.

Dated March 21, 2003, at San Francisco, California.

/s/ BURTON W. MATTSON for
John Thorson
Administrative Law Judge

Attachment A
Page 1

ISSUES AND QUESTIONS FOR INFORMAL HEARING/WORKSHOP

9:00 a.m., Tuesday, March 11, 2003

California Public Utilities Commission Courtroom Room
505 Van Ness Avenue, San Francisco, California 94102

The following questions are in response to the comments filed by the parties this week. Parties attending the workshop will have an opportunity to speak briefly to any of the following issues or questions they wish to address. Afterwards, parties will have an additional opportunity to elaborate upon or clarify their written comments and replies. These issues and questions will be set forth in a ruling to be filed in this proceeding.

1. Several parties (CPUC/CPSD, Duke Energy) have commented that certain “relevant” or “appropriate” standards be set forth in a General Order. More specifically, which are the “relevant” and “appropriate” standards that should be included in a General Order?
2. The commenting parties have suggested a variety of enforcement strategies, *e.g.*, incorporation in the ISO tariff for exempt wholesale generators (EWGs), incorporation into performance-based ratemaking, threshold exemptions, among others.
 - What are the advantages and disadvantages of developing different enforcement procedures for the various types of generators?
 - Or, is a single set of enforcement procedures preferable?
3. Several parties have suggested incorporating the maintenance standards into the ISO tariff as a means to make them binding on EWGs.
 - What would be the respective roles of the CPUC, ISO, and FERC under this approach, especially with regard to reviewing certifications, conducting audits or inspections, and filing complaints, and evidentiary hearings concerning maintenance violations?
 - What assurances are there that the ISO and FERC would agree to the incorporation of the maintenance standards in its tariff?
 - Has such an arrangement, incorporation in an ISO tariff, been utilized before?
 - What generators otherwise covered by SBX2 39, if any, would not be bound by an ISO tariff arrangement?
4. What existing or contemplated ISO protocols, if any, potentially overlap with the maintenance standards?
5. Do NAERC or WECC standards have any federal law stature, such as by incorporation into tariffs filed with FERC?

Attachment A
Page 2

6. Public Utility Code section 228.5 provides that qualifying small power producers and similar facilities are not public utilities subject to the Commission's general jurisdiction. Does section 761.3(a) grant the Commission special or specific jurisdiction over these facilities?
7. Under SBX2 39, does the CPUC have authority to exempt certain generators from enforcement, such as those below 10 MW of capacity or those with multiple small units and unpredictable, intermittent production (wind turbines)? Or, can these unique characteristics be addressed through appropriately tailored certifications and maintenance plans?
8. One suggested enforcement approach is to incorporate the maintenance requirements into the performance-based ratemaking for each utility? How many electric generators are participating in PBR?
9. Mirant suggests that agency enforcement authority cannot be delegated to staff. A staff-initiated complaint itself is arguably a discretionary rather than ministerial act. Please explain the scope of your position.
10. In terms of informal "meet and confer" sessions to resolve apparent maintenance violations, does state law allow these sessions to be confidential and "off-the-record?"
11. Some of the maintenance standards--or audits or inspections related to the standards--may disclose apparent health and safety problems. In such cases, how does the CPUC's enforcement role relate to EPA, Cal-EPA, OSHA, or Cal-OSHA jurisdiction?

(END OF ATTACHMENT A)

Attachment B
Page 1

EMAIL COMMENT FROM SEAWEST WINDPOWER

March 10, 2003, 2:51 pm

John:

Many thanks - I am having a very hard time getting the time to personally participate in this proceeding and therefore appreciate that at least to date I have been able to offer my comments in written form.

I appreciate that implementation of the Standards is important in order to ensure adequate reliability and availability of the state's overall electric supply situation - however I do not believe that intermittent renewable projects will affect this situation (ISO's understanding of generating capacity that is available to supply the market) one way or the other. I therefore do not want to get involved in the specific details of the standards as a whole but want to provide argument and influence the decision as to why wind generators should not be required to abide by the same standards as base load / dispatchable or firm (peaking) generators. SeaWest in addition to a number of other wind generators are willing to participate and engage legal representation - but would obviously like to keep this effort focused and to a minimum.

Please could you let me know how my initial comments will be addressed and if I need to make further efforts to have these issues considered, or if we should plan on being involved in the whole process (which may just mean that we cannot be represented on this issue throughout the whole proceeding). Any insight into this would be much appreciated. Even though I will not be able to join you tomorrow, I believe that another wind generator will be present and will hopefully be able to answer any questions. I hope that my initial comments will be subject to some consideration from the commission, committee and yourself.

Many thanks

Edward Maddox
6190 908 3423

Attachment B
Page 2

-----Original Message-----

From: Thorson, John E. [mailto:jet@cpuc.ca.gov]
Sent: Monday, March 10, 2003 1:07 PM
To: 'emaddox@seawestwindpower.com'
Subject: RE: Questions for March 11 Workshop, R02-11-039

Unfortunately, we have made no arrangements for a telephone conference connection. I do, however, have your written comments.

John E. Thorson
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Ave., Rm. 5012
San Francisco, CA 94102
(415) 355-5568
jet@cpuc.ca.gov

-----Original Message-----

From: emaddox@seawestwindpower.com [mailto:emaddox@seawestwindpower.com]
Sent: Friday, March 07, 2003 2:16 PM
To: jet@cpuc.ca.gov
Subject: RE: Questions for March 11 Workshop, R02-11-039

Many thanks for the questions for the hearing on Tuesday. I was just wondering if there was a telephone conference facility for this meeting – it may be difficult for me to get to SF.

Regards

Ed Maddox

(END OF ATTACHMENT B)

CERTIFICATE OF SERVICE

I certify that I have by mail, and electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Following Workshop (Maintenance Standards) on all parties of record in this proceeding or their attorneys of record.

Dated March 21, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074,

R.02-11-039 JET/cgj

TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.